

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's Rules)	ET Docket No. 00-258
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction of)	
New Advanced Wireless Services, including)	
Third Generation Wireless Systems)	
)	
Amendment of Section 2.106 of the Commission's)	ET Docket No. 95-18
Rules to Allocate Spectrum at 2 GHz for Use By)	
the Mobile-Satellite Service)	
)	
The Establishment of Policies and Service Rules)	IB Docket No. 99-81
for the Mobile-Satellite Service in the 2 GHz Band)	
)	
Petition for Rule Making of the Wireless)	
Information Networks Forum Concerning the)	RM-9498
Unlicensed Personal Communications Service)	
)	
Petition for Rule Making of UTStarcom, Inc.,)	
Concerning the Unlicensed Personal)	RM-10024
Communications Service)	

To: The Commission

**REPLY COMMENTS OF COX BROADCASTING, INC.
AND COSMOS BROADCASTING CORPORATION**

Cox Broadcasting, Inc. ("Cox") and Cosmos Broadcasting Corporation (collectively, the "Joint Broadcasters"),¹ by their attorneys, hereby submit these reply comments pursuant to the

¹ Cox, either directly or through subsidiaries, is the licensee of the following television stations: WSB-TV, Atlanta, Georgia; WSOC-TV, Charlotte, North Carolina; WAXN(TV), Kannapolis, North Carolina; WHIO-TV, Dayton, Ohio; KFOX-TV, El Paso, Texas; WJAC-TV, Johnstown, Pennsylvania; WFTV(TV), Orlando, Florida; WRDQ(TV), Orlando, Florida; WPXI(TV), Pittsburgh, Pennsylvania; KRXI(TV), Reno, Nevada; KTVU(TV), Oakland, California; KICU-TV, San Jose, California; KIRO-TV, Seattle, Washington; and WTOV-TV, Steubenville, Ohio.

Cosmos, either directly or through subsidiaries, is the licensee of the following television stations: WIS(TV) (Columbia, South Carolina), WSFA(TV) (Montgomery, Alabama), WTOL-TV (Toledo, Ohio),

Commission's *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in the above-referenced proceedings. The Commission is considering a further reallocation of a portion of the 2 GHz spectrum that is scheduled to be reallocated to Mobile Satellite Service ("MSS") and is currently allocated to the Broadcast Auxiliary Services ("BAS"). Specifically, the Commission is considering reallocating the 2020-2025 MHz frequency band to advanced wireless services (including third generation ("3G") wireless services) rather than MSS.² By considering this 3G reallocation, the Commission has created additional uncertainty in the mandatory negotiations between MSS entrants and BAS incumbents for the complex relocation of BAS operators to a smaller, rechannelized band.³ The Joint Broadcasters, who have participated often in this proceeding, are concerned that this potential 3G reallocation significantly could change the dynamics of relocating BAS operations. Accordingly, the Joint Broadcasters urge the Commission to (1) stay negotiations between BAS incumbents and MSS entrants pending resolution of the proposed reallocation; and (2) ensure that BAS incumbents are fully compensated prior to relocation.

KPLC-TV (Lake Charles, Louisiana), KAIT-TV (Jonesboro, Arkansas), WAVE-TV (Louisville, Kentucky), WFIE-TV (Evansville, Indiana), WLOX-TV (Biloxi, Mississippi), WALB-TV (Albany, Georgia), KGBT-TV (Harlingen, Texas), WWAY-TV (Wilmington, North Carolina), WLBT-TV (Jackson, Mississippi), KLTN-TV (Tyler, Texas) and KTRE-TV (Lufkin, Texas).

² Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New 3G Services, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 00-258, FCC 01-224, at ¶¶ 24-27 (rel. Aug. 20, 2001) ("*Wireless Reallocation MO&O/FNPRM*").

³ See 47 C.F.R. § 74.690; Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service, *Second Report and Order and Second Memorandum Opinion and Order*, ET Docket No. 95-18, 15 FCC Rcd 12315, 12326-27 (2000) ("*2 GHz Relocation 2d R&O/2d MO&O*").

I. THE BAS RELOCATION PLAN IS THE RESULT OF SIGNIFICANT AND COMPLEX BALANCING.

The Joint Broadcasters' television stations intensively use BAS channels to provide viewers with local news and events by linking station studios to fixed and mobile operations. Local electronic news gathering ("ENG") mobile units use BAS channels every day to provide live coverage of important community matters such as politics, sports, weather, and human interest stories. Viewers expect local stations to provide them with live coverage of significant events and have come to rely upon this service. As MSTV and NAB noted in their comments in this proceeding, television stations' comprehensive coverage of the September 11 terrorist attacks was made possible by the effective, nationwide sharing of 2 GHz BAS spectrum.⁴ Indeed, it is this ability to provide live, visual coverage of local news and events that distinguishes local television from any other service.

The Commission previously decided to reallocate a portion of the BAS spectrum to MSS pursuant to a complex, two-phase plan, under which the BAS spectrum is reduced from 1990-2110 MHz to 2025-2110 MHz, and new MSS entrants reimburse BAS operators for their relocation costs.⁵ The process requires extensive planning on the part of broadcasters to ensure that service disruptions would be minimized. In the interim "Phase I," the existing BAS Channel 1 was to be cleared for early MSS entrants, who have until September 6, 2002 to conduct "mandatory negotiations" for relocating BAS operators in the top 30 markets. Upon completion of the relocations, broadcasters in all markets would cease using BAS Channel 1 and early MSS entrants would commence operations. In the following three years, MSS licensees would

⁴ Joint Comments of the Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB") at 4.

⁵ See 47 C.F.R. § 74.690; *2 GHz Relocation 2d R&O/2d MO&O*, 15 FCC Rcd 12315.

relocate BAS users to Phase I operations in markets 31-100. No Phase I relocation provisions were established for stations in markets higher than 101. Phase II was to be triggered when MSS entrants determined a need for additional spectrum. At that point, MSS entrants and broadcasters in the top 30 markets have another two years to complete Phase II relocation negotiations. Upon completion of the relocations, broadcasters in all markets would cease using the current BAS Channel 2, and MSS entrants would commence operations. Subsequent to that, MSS licensees would have three years to relocate BAS operations in markets 31-100 and an additional two years (for a total of five) for the remaining markets. MSS licensees' obligation to reimburse BAS incumbents for relocation would sunset in 2010.⁶

II. THE COMMISSION SHOULD STAY MANDATORY NEGOTIATIONS BETWEEN BAS INCUMBENTS AND MSS ENTRANTS.

The *Wireless Reallocation MO&O/FNPRM* largely fails to account for the impact that the potential 3G reallocation would have on the current BAS relocation plan and inquires only generally about possible modifications to the complex BAS plan.⁷ The Joint Broadcasters recognize the difficulties of keeping pace with technological changes and applaud the Commission for attempting to respond in like fashion to the burgeoning demand for 3G spectrum. As stated by MSTV and NAB, however, the factual predicate for the current BAS relocation plan is incompatible with a further reallocation of the 2020-2025 MHz frequency band to 3G services.⁸ The triggering events for BAS relocations are based upon MSS spectrum demand and actual entry, and it is reasonable to expect that 3G licensees will be prepared to offer

⁶ See 47 C.F.R. § 74.690; *2 GHz Relocation 2d R&O/2d MO&O*, 15 FCC Rcd at 12326-27.

⁷ *Wireless Reallocation MO&O/FNPRM* at ¶ 33.

⁸ MSTV and NAB Comments at 9.

service prior to MSS entrants and will use spectrum now scheduled to be cleared last. Moreover, a 3G reallocation raises added uncertainties about new entrants' compensation responsibilities to BAS incumbents.

Accordingly, the Joint Broadcasters agree with MSTV and NAB that the Commission should stay negotiations with MSS entrants until such time as it can harmonize the current BAS plan with the potential 3G reallocation.⁹ Given that the multi-faceted BAS relocation plan now could be subject to another layer of complexity, the Joint Broadcasters also urge the Commission to issue a separate Notice of Proposed Rulemaking in response to the comments and reply comments in this proceeding that address modifications to the current BAS relocation plan – especially since the Commission may be inclined to consider abandoning the phased-in relocation.¹⁰ The Joint Broadcasters note that the BAS relocation plan, as set forth in Section 74.690 of the Commission's rules, balanced a number of difficult issues and was adopted only last year after over five years of notice and comment deliberations.¹¹ Because the potential 3G reallocation is inconsistent with the factual predicate of the current BAS relocation plan, the Joint Broadcasters believe that the Commission should take similar care and reexamine the current plan to ensure effective BAS relocation and minimal BAS disruption.

⁹ *Id.* at 11.

¹⁰ *Wireless Reallocation MO&O/FNPRM* at ¶ 33.

¹¹ *See* Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Notice of Proposed Rule Making*, 10 FCC Rcd 3230 (1995); *First Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 7388 (1997); *2 GHz Relocation 2d R&O/ 2d MO&O*, 15 FCC Rcd 12315 (2000).

III. THE COMMISSION MUST ENSURE FULL COMPENSATION OF BAS INCUMBENTS PRIOR TO RELOCATION.

However the Commission may propose to revise the BAS relocation plan, the Joint Broadcasters agree with MSTV and NAB that, consistent with the Commission's decisions in this proceeding, all new entrants must ensure full compensation of BAS incumbents' relocation expenses.¹² The Joint Broadcasters are confident that the Commission can develop straightforward guidelines for equitable cost-sharing among the various new entrants. However, to account for the anticipated differences in service types and commencement dates, BAS incumbents must be fully compensated *prior* to relocation – and prior to any modification or replacement of BAS equipment. Only in this manner will the Commission continue to adhere to the well-considered principles of *Emerging Technologies*.

CONCLUSION

A further reallocation of the 2020-2025 MHz frequency band to advanced wireless services is inconsistent with the existing BAS relocation plan. Because of the uncertainty added by this potential reallocation, the Commission should stay the complex mandatory negotiations between BAS incumbents and MSS entrants until it reaches a decision on the 3G reallocation and revises the current BAS plan accordingly. Whatever the outcome of the current proceeding, the Commission should not stray from its consistently held position that new entrants must fully

¹² MSTV and NAB Comments at 13. The Commission consistently has stated that it would apply the reimbursement principles of *Emerging Technologies*. See, e.g., *2 GHz Relocation 2d R&O/ 2d MO&O*, 15 FCC Rcd at 12329 (citing *Emerging Technologies* proceeding, Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994), *aff'd*, *Association of Public Safety Communications Officials-Int'l Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996)).

compensate BAS incumbents for all relocation expenses. Given the potential variety of service types and commencement dates for the new entrants, the Commission should ensure that BAS incumbents are compensated prior to relocation.

Respectfully submitted,

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